

Exhibit 342

United States of America ex rel. Ven-A-Care of the Florida Keys, Inc., et al.
v. Dey, Inc., et al., Civil Action No. 05-11084-PBS

**Exhibit to the August 28, 2009 Declaration of Sarah L. Reid in Support
of Dey's Opposition to Plaintiffs' Motion for Partial Summary Judgment**

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1 UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF MASSACHUSETTS

3 MDL No. 1456

4 Master File No. 01-CV-12257-PBS

5 Subcategory Case No. 06-11337

6 -----X

7 In re: PHARMACEUTICAL INDUSTRY
8 AVERAGE WHOLESALE PRICE LITIGATION

9 -----X

10 THIS DOCUMENT RELATES TO:

11 United States of America ex rel. Ven-A-Care of the
12 Florida Keys, Inc., et al. v. Dey, Inc., et al.,
13 Civil Action No. 05-11084-PBS

14 -----X

15 CONFIDENTIAL VIDEOTAPED DEPOSITION OF

16 SIMON DAVID JOHN PLATT

17 Wednesday, March 18, 2009

18 9:02 a.m. to 5:13 p.m.

19 Held At: Foley Hoag LLP

20 155 Seaport Boulevard

21 Boston, Massachusetts 02210-2600

22 Reporter: Justina M. Pettinelli, RDR/CRR

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1 currently paid," in my experience, a quarter is a
2 reasonable surrogate for a measurement period.

3 Q. Let's focus on that for a second.

4 "Generally and currently paid," you used that term
5 in your report; right?

6 A. Yes.

7 Q. Generally and currently paid by who?

8 A. By customers of Dey.

9 Q. Such as pharmacies?

10 A. Including pharmacies presumably, yes.

11 Q. And is it your testimony that when we look
12 at the average sales prices that you calculated for
13 the Dey products at issue here, is it your testimony
14 that pharmacies were paying that exact number on
15 average?

16 MS. THOMAS: Objection.

17 MR. HENDERSON: Objection.

18 A. My report stands in the analysis that it is.
19 Pharmacies are one class of trade. Pharmacies buy
20 from Dey directly. They buy indirectly. I think
21 all the data is set out in the various parts. There
22 are -- my analysis includes some prices that

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1 pharmacies are paying as customers of Dey as well as
2 other customers.

3 Q. But what you come up with are average sales
4 prices; right? Is that right?

5 A. Is that a question?

6 Q. Yes. What you calculate is quarterly
7 average sales prices; right?

8 A. I calculate a lot of, yes, averages.

9 Q. Okay. Do you know, do you know for a fact
10 that you can demonstrate by some piece of evidence
11 that any pharmacy paid the exact average sales price
12 that you come up with for a Dey drug during the
13 period for which you do the calculation?

14 MR. HENDERSON: Objection.

15 A. I have not gone back through the data to
16 compare the calculated average selling price to see
17 if any, I think your question was pharmacy, paid
18 that exact amount for its transaction. That may or
19 may not -- there may be such a transaction. There
20 may be many such transactions. There may be no such
21 transactions.

22 Q. Okay.

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1 A. That's the nature of an average.

2 Q. Okay. Now, what we do know for certain is
3 that some pharmacies would pay more than the
4 average, correct, than the average that you
5 calculated?

6 A. Well, again, you refer to the average. I
7 calculated a number of averages, many averages.

8 Q. I agree with you. There are many averages
9 in here. So let me be more precise. If we take the
10 average sales price that you calculated for a Dey
11 drug in a particular quarter, a particular NDC
12 number, since that is an average number at that
13 point in time, you would be very certain that some
14 customers paid more than that average price; right?

15 A. Yes, some customer or customers.

16 Q. In fact, that would have to be the case
17 since it's an average; right?

18 A. Correct. There is something --

19 MS. THOMAS: Objection.

20 A. -- above and something below --

21 Q. Right.

22 A. -- for it to be a mean.

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1 A. Yes, I believe that's the case, yes.

2 Q. And --

3 A. I'm sorry. Within ranges, but yes.

4 Q. But just different numbers, regardless of
5 what the range is, they may be different as to each
6 class of trade; isn't that right?

7 A. Yes, I believe so.

8 Q. Now, which of the numbers should Dey send to
9 First DataBank, which of the various averages should
10 it send to First DataBank under your view?

11 MR. HENDERSON: Objection.

12 A. Again, I wasn't retained to and I have no
13 opinion on what Dey should have reported as its AWP.
14 I think I've said that now a couple of times. That
15 wasn't what I was asked to do, and that's not what
16 I've done, and that's not what I've opined.

17 Q. And my question is, when you do your
18 analysis -- because part of what you say is that Dey
19 could have reported different numbers as its AWP or
20 WAC; right? That's part of what you're saying here,
21 isn't it?

22 A. As an accountant, yes, an expert in

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1 quarter, when they're recorded, would affect the
2 average sales price for the quarter even though the
3 sales that those chargebacks relate to occurred in a
4 prior quarter?

5 A. Correct, because the basis of this --
6 because the data we have and the data we received is
7 on a transaction posting basis, and so it doesn't --
8 as I said earlier, I don't have the ability to take
9 a chargeback and identify against it the sale, the
10 date on which the sale was made to which that
11 chargeback purely applies.

12 Q. So the average sales price in a quarter does
13 not accurately reflect the average sales price in
14 that quarter, because it bears -- it's affected by
15 transactions, chargebacks that relate to earlier
16 sales? Would you agree with that?

17 A. The average in that quarter accurately
18 represents the average for the transactions posted
19 in that quarter. It does not accurately or exactly
20 necessarily, unlikely to, reflect the average under
21 an accrual method.

22 Q. Now, if the -- if an objective was, in these

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1 cases, was to try to determine the average price
2 paid by providers who actually dispense the drugs
3 and then submit claims to Medicaid, to determine
4 what those providers paid to wholesalers for
5 acquiring the drugs that they ultimately dispensed,
6 would you agree that the best data to do that would
7 be the wholesalers' data?

8 THE WITNESS: Would you mind reading
9 that one back, please.

10 (The reporter read back the portion requested.)

11 MS. THOMAS: Objection.

12 A. I would agree in part. First of all, as
13 we've seen, there are some providers that are direct
14 customers of Dey who are not wholesalers. So
15 presumably they are providing directly, and the
16 prices which they are paying are the prices that Dey
17 sees in its sales transactions.

18 To the extent providers have purchased
19 through a wholesaler and to the extent the
20 information that the wholesaler is providing back to
21 Dey on its contract sales does not accurately
22 reflect the price, then I agree that you'd need to

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1 fill that hole best in an absolute sense by going to
2 the wholesalers' records. Whether or not Dey could
3 do that, I have no idea, but in principle there
4 could be some elements of the calculation you
5 outline best obtained from the wholesalers' records.

6 Q. And let's define AWP for purposes of this
7 question, this next question, as the average
8 wholesale price, which is the average price paid by
9 providers to wholesalers for a particular drug.
10 Okay? Are you with me so far?

11 A. I think so, yes.

12 Q. In order to determine that average wholesale
13 price, as I've just described it, would the best
14 place to get accurate information for that is to go
15 to the wholesalers and get their data as to what on
16 average they sold to providers?

17 A. Potentially, or frankly potentially going to
18 the providers and finding out what they paid.

19 Q. Okay.

20 A. Again, we're in this -- in your hypothetical
21 world here. Recognizing from the Dey data that in
22 the aggregate Dey is selling 2.4 -- for this period

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1 returns but not exclude ship price errors?

2 A. Well, as I said before, the returns have
3 both a price and a quantity adjustment, both of
4 which -- well, each of which affects the numerator
5 and the denominator of the average calculation. A
6 ship price error affects only the numerator, and
7 therefore, the dollar impact of that error is that
8 much greater and needs to be included in my opinion.

9 Q. Now, your calculation of average prices is a
10 straightforward exercise in arithmetic computation;
11 right?

12 A. Yes. Once the net sales amount has been
13 arrived at and the adjustment for shelf cartons and
14 so on and so forth, but yes.

15 Q. It doesn't require any particular expertise
16 to come up with those numbers?

17 A. I'm sorry. Which numbers?

18 Q. The average sales prices. The calculation
19 of average prices once you have the net sales data,
20 it doesn't require any particularized expertise to
21 come up with that; isn't that right?

22 A. Once you've arrived at the net sales amount

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1 being the numerator and the quantities being the
2 denominator, the pure calculation of the average is
3 a straightforward mathematical exercise.

4 Q. And arriving at the net sales is also a
5 straightforward mathematical exercise once you have
6 the amount billed and the various deductions that
7 you decide to subtract; right?

8 A. Once you've decided what are the elements
9 that comprise net sales from the data, yes, and the
10 application of accounting principles, yes.

11 Q. Now, what you saw in the data, in the Dey
12 data, in your understanding, is that the average
13 selling prices calculated by Dey internally were
14 done on an accrual basis; right?

15 A. As best I could determine, it appeared so.

16 Q. And that's different than the basis on which
17 you did the average prices?

18 A. Correct, in that the data I had available to
19 me was the transaction date, the date on which the
20 transaction was posted.

21 Q. And the fact that one average sales price is
22 calculated on accrual and another one on a